

In paragraph 4 of the Office Action, the Examiner objected to informalities in the specification. In response, the specification has been amended to correct the informalities.

In paragraphs 5-6, the Examiner rejected claims 1-7 and 14 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner also stated that claims 2-7 were rejected as being dependent upon a rejected base claim. In response, the Applicant has amended claims 1 and 14 to more distinctly claim the subject matter which Applicant regards as the invention. Additionally, claim 14 has been amended to correct the grammatical error of the phrase "is slide." In addition, claims 2-7 depend from independent claim 1 and recite additional limitations in combination with the novel elements of claim 1. Therefore, the withdrawal of the rejection and the allowance of claims 1-7 and 14 is respectfully requested.

In paragraphs 7 and 8 of the Office Action, the Examiner rejected claims 1-3 and 6-10 under 35 U.S.C. 103 (a) as being unpatentable over U.S. Patent No. 6,289,529 to Harvey (Harvey) in view of U.S. Patent No. 4,489,448 to Cairo (Cairo). The Examiner stated that Harvey discloses a horizontal surface, a basket having a horizontal bottom surface, four generally vertical sides, two overhanging edges extending from a top portion of two opposing sides, and a means for slidably supporting a basket. The Examiner further states that Cairo teaches the use of a first leg, a second leg and a first brace support. The Examiner also stated that Cairo also teaches the use of a third leg, a fourth leg and a second brace support. The Examiner stated that it would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify the shower SEATO and basket combination of Harvey with the teaching of Cairo.

In response, the Applicant has amended independent claims 1 and 8 to better differentiate Applicant's invention from Harvey and Cairo. Harvey discloses a shower seat which is affixed to the wall of a shower stall. The shower seat disclosed in Harvey cannot be moved away from the wall. Cairo merely discloses a foot stool having leg supports. On the other hand, Applicant's invention discloses a seat which is moveable and is not confined to one location within the shower stall. In addition, Applicant's invention includes a basket which may be slid outwardly from

underneath the horizontal surface in two directions (fore and aft). Harvey does not teach or suggest a seat which is moveable nor does Harvey teach or suggest of a basket which may be slide outwardly fore and aft of the horizontal surface.

In addition, for prior art references to be combined to render obvious a subsequent invention under Section 103, there must be something in the prior art as a whole which suggests the desirability, and thus the obviousness, of making the combination. *Uniroyal v. Rudkin-Wiley*, 5 U.S.P.Q.2d 1434, 1438 (Fed. Cir. 1988). The teachings of the references can be combined only if there is some suggestion or incentive in the prior art to do so. *In re Fine*, 5 U.S.P.Q.2d at 1599. Hindsight is strictly forbidden. It is impermissible to use the claims as a framework from which to pick and choose among individual references to recreate the claimed invention. *Id.* At 1600; *W.L. Gore*, 220 U.S.P.Q. at 312. Moreover, the mere fact that a prior art structure could be modified to produce the claimed invention would not have made the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 23 U.S.P.Q.2d 1780, 1783 (Fed. Circ. 1992); *In re Gordon*, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). There is no motivation or suggestion for modifying Harvey with features of Cairo. Specifically, Harvey specifically discloses a shower seat which is fixed to the wall of the shower stall. Harvey does not teach or suggest a moveable seat, but rather is a stationary seat which provides a solid seat in an aesthetically pleasing manner. Claims 2, 3, 6, and 7 depend from independent claim 1 and recite additional limitations in combination with the novel elements of claim 1. In addition, claims 9 and 10 depend from independent claim 8 and recite additional limitations in combination with the novel elements of claim 8. Therefore, the withdrawal of the rejection and the allowance of claims 1-3 and 6-10 is respectfully requested.

In paragraph 9 of the Office Action, the Examiner rejected claims 4-5, 11-12 and 15 under 35 U.S.C. 103 (a) as being unpatentable over Harvey and Cairo and further in view of U.S. Patent No. 1,856,847 to Gates (Gates). The Examiner stated that it would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify Harvey and Cairo with the addition of the article holder taught by Gates.

In response, the Applicant has amended independent claims 1, 8, and 15 to better differentiate Applicant's invention from Harvey, Cairo, and Gates. As discussed above, Harvey does not teach or suggest a moveable stool or a basket which may be slid outwardly fore or aft in relation to the horizontal surface. Claims 4 and 5 depend from independent claim 1 and recite additional limitations in combination with the novel elements of claim 1. In addition, claims 11 and 12 depend from independent claim 8 and recite additional limitations in combination with the novel elements of claim 8. Therefore, the withdrawal of the rejection and the allowance of claims 4-5, 11-12 and 15 is respectfully requested.

In paragraph 10 of the Office Action, the Examiner rejected claims 13 and 14 under 35 U.S.C. 103 (a) as being unpatentable over Harvey and Cairo and further in view of U.S. Patent No. 6,289,529 to Hines (Hines). The Examiner stated that it would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify Harvey and Cairo with the addition of a cover taught by Hines.


In response, the Applicant has amended independent claim 8 to better differentiate Applicant's invention from Harvey, Cairo, and Hines. As discussed above, Harvey does not teach or suggest a moveable stool or a basket which may be slid outwardly fore or aft in relation to the horizontal surface. Claims 13 and 14 depend from independent claim 8 and recite additional limitations in combination with the novel elements of claim 8. Therefore, the withdrawal of the rejection and the allowance of claims 13 and 14 is respectfully requested.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "**Version with markings to show changes made.**"

CONCLUSION

For all the above reasons, the Applicant respectfully requests the reconsideration and withdrawal of the rejection and the allowance of claims 1-15.

Respectfully submitted,



Michael L. Diaz
Registration No. 40,588

Dated: 3-17-03

Michael L. Diaz, P.C.
555 Republic Drive, Suite 200
Plano, Texas 75074
(972) 578-5669

VERSION WITH MARKING TO SHOW CHANGES MADE

IN THE SPECIFICATION

The paragraph beginning at page 3, line 16 has been rewritten as follows:

--Wanke [is] discloses a hygiene seat for handicapped persons which includes a rim having two cooperating tubes. The tubes are adjusted in an axial direction. In addition, the underside of the rim include guide rails for receiving a tube or a board. Although Wanke discloses a tub which slides underneath a seat, Wanke does not teach or suggest utilizing the guide rails to reinforce the strength of the seat. In addition, Wanke does not teach or suggest affixing the tube adjacent the horizontal surface of the seat.--

The paragraph beginning at page 4, line 10 has been rewritten as follows:

--In one aspect, the present invention is a portable seat assembly for use by a person bathing in a shower or bath stall. The seat assembly includes a horizontal surface constructed of a rigid material. The seat assembly also includes a first support having a first leg, a second leg, and a first brace support connecting the first leg to the second leg. The seat assembly also includes a second support having a third leg, a fourth leg and a second brace support connecting the [first] third leg to the [second] fourth leg. The first brace support is affixed to an underside of the horizontal surface with the second brace support diagonally lying across the first brace support on the underside of the horizontal surface. In addition, the seat assembly includes a basket slidably mounted to the

underside of the horizontal surface and two guide rails for supporting the two overhanging edges of the basket on the underside of the horizontal surface.--

The paragraph beginning at page 5, line 8 has been rewritten as follows:

--In still another aspect, the present invention is a portable seat assembly for use by a person bathing having a horizontal surface constructed of a rigid material. The horizontal surface has a plurality of holes. A first support having a first leg, a second leg, and a first brace support connecting the first leg to the second leg is mounted on the underside of the horizontal surface. A second support having a third leg, a fourth leg and a second brace support connecting the [first] third leg to the [second] fourth leg is also mounted diagonally across the first brace support on the underside of the horizontal surface. A basket is slidably mounted to the underside of the horizontal surface. The basket includes a generally horizontal bottom surface and four generally vertical sides affixed to the bottom surface. The four sides and bottom surface form an enclosure for storing shower supplies. The basket also includes two overhanging edges extending outwardly from a top portion of two opposing sides of the basket. Two guide rails are also mounted on the underside of the horizontal surface. Each guide rail forms a lip to support each overhanging edge of the basket. In addition, an adjustable rod is affixed to the horizontal surface and extends from the edge of the horizontal surface to retain the basket against the edge of the horizontal surface.--

The paragraph beginning at page 7, line 13 has been rewritten as follows:

--FIG. 2 is a front view of the shower seat 10 with the basket 26 removed from the underside of the horizontal surface. The basket may be slid either aft or forward to allow a user to access the interior of the basket while still attached to the guide rails 22 and 24 (in a similar fashion to opening [or] a drawer) or completely removing the basket from the guide rails (as illustrated in FIG. 2).--

IN THE CLAIMS

The following claims have been amended:

1. (Amended) A portable seat assembly for use by a person bathing, the seat assembly comprising:

a horizontal surface constructed of a rigid material, said horizontal surface being unattached to any flooring or wall;

a first support, said first support including a first leg, a second leg, and a first brace support connecting the first leg to the second leg, the first leg and second leg being unattached to any flooring or wall;

a second support, said second support including a third leg, a fourth leg and a second brace support connecting the [first] third leg to the [second] fourth leg, the third leg and fourth leg being unattached to any flooring or wall;

the first brace support affixed to an underside of said horizontal surface;

the second brace support diagonally laying across the first brace support on the underside of said horizontal surface;

a basket slidably mounted to the underside of said horizontal surface, said basket having:

a generally horizontal bottom surface;

four generally vertical sides affixed to the bottom surface, the four sides and bottom surface forming an enclosure for storing shower supplies; and

two overhanging edges extending outwardly from a top portion of two opposing sides of said basket; and

means for slidably supporting the two overhanging edges of said basket on the underside of said horizontal surface[.];

whereby said basket may be slid outwardly either fore or aft from said horizontal surface.

8. (Amended) A portable seat assembly for use by a person bathing, the seat assembly comprising:

a horizontal surface constructed of a rigid material;

four support legs attached to an underside of said horizontal surface, said four support legs and horizontal surface being unattached to any flooring or wall;

a basket slidably mounted to the underside of said horizontal surface, said basket having:

a generally horizontal bottom surface;

four generally vertical sides affixed to the bottom surface, the four sides and bottom surface forming an enclosure for storing shower supplies; and

two overhanging edges extending outwardly from a top portion of two opposing sides of said basket; and

means for slidably supporting the two overhanging edges of said basket on the underside of said horizontal surface[.];

whereby said basket may be slid outwardly either fore or aft from said horizontal surface.

14. (Amended) The seat assembly of claim 13 wherein the means for slidably supporting the two overhanging edges includes a plurality of outcroppings;

whereby [when] said cover is tilted when said basket is [slide] slid outwardly from under said horizontal surface.

15. (Amended) A portable seat assembly for use by a person bathing, the seat assembly comprising:

a horizontal surface constructed of a rigid material, said horizontal surface having a plurality of holes, said horizontal surface being unattached to any flooring or wall;

a first support, said first support including a first leg, a second leg, and a first brace support connecting the first leg to the second leg, the first and second leg being unattached to any flooring or wall;

a second support, said second support including a third leg, a fourth leg and a second brace support connecting the [first]^{third} leg to the [second] fourth leg, the third and fourth leg being unattached to any flooring or wall;

the first brace support affixed to an underside of said horizontal surface;

the second brace support diagonally lying across the first brace support on the underside of said horizontal surface;

a basket slidably mounted to the underside of the horizontal surface, said basket having:

a generally horizontal bottom surface;

four generally vertical sides affixed to the bottom surface, the four sides and bottom surface forming an enclosure for storing shower supplies; and

two overhanging edges extending outwardly from a top portion of two opposing sides of said basket;

two guide rails mounted on the underside of the horizontal surface, each guide rail forming a lip to support each overhanging edge of said basket; and

an adjustable rod affixed to said horizontal surface and extending from the edge of said horizontal surface to retain said basket against the edge of said horizontal surface[.];

whereby said basket may be slid outwardly either fore or aft from said horizontal surface.

IN THE DRAWINGS

FIG. 6 has been amended as indicated in red.